IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2318 OF 2005

Surajbhan Risalsing Kagda ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.A.M. Patankar, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

20th April 2005

P.C.:

. Heard Counsel for the parties. Perused the record. Indeed, the offence in question is a serious offence. However, I find substance in the argument of the Applicant that the identification parade in which the Applicant is stated to have been identified will have to be discarded. This is obviously a prima facie view that I am expressing for consideration of prayer

for bail. It is seen that the Applicant was the only person aged 45 years amongst the dummies. The dummies, on the other hand, were of different ages, ranging from 20 years to 36 years only. Besides, the test identification parade has been held after 24 days. Clause 16(2)(h) of the Criminal Manual obligates that the suspect should be placed amongst persons, if practicable eight or more, who are, as far as possible, of the same "age", height, general appearance, etc. This basic requirement of conducting identification parade has not been observed in the present case, which renders the test identification parade doubtful. If that evidence is to be ignored, then, in my opinion, the Applicant deserves to be granted bail, but on imposing strict conditions in the following terms.

(A) The Applicant is directed to be released on bail in connection with CR.No.81 of 2004 registered with Shahu Nagar Police Station, Mumbai, on executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen thousand only) with two local sureties in the like

amount.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the evidence in any manner whatsoever.

(C) The Applicant shall not enter the City of Mumbai except for attending the Court case on the relevant dates during the pendency of the trial.

(D) The Applicant shall inform his place of residence to the investigating officer as well as the trial Court within one week from the date of release. Besides, he shall report to the nearest police station once in a month on first Sunday of every English calendar month.

(E) The Applicant shall co-operate the trial Court for the early disposal of the trial. If the trial Court is of the opinion that the Applicant are responsible in any manner for delay in

disposal of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)